

FILED
3/26/2019

PK

RECEIVEDDEC 27 2018 *PS*THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISIONTHOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

TERRIN LEE

(Full name and prison number)
(Include name under which convicted)
PETITIONER

vs.

JACQUELINE LASHBROOK

(Warden, Superintendent, or authorized
person having custody of petitioner)
CUSTODIAN, and(Fill in the following blank only if judgment
attacked imposes a sentence to commence
in the future)

ATTORNEY GENERAL OF THE STATE OF

(State where judgment entered)

1:18-cv-08502

Judge Charles P. Kocoras

Magistrate Judge Sheila M. Finnegan
PC10

Case Number of State Court Conviction:

10CR-6763**PETITION FOR WRIT OF HABEAS CORPUS – PERSON IN STATE CUSTODY**

1. Name and location of court where conviction entered:

CIRCUIT COURT OF COOK COUNTY ILLINOIS, CHICAGO, ILLINOIS

2. Date of judgment of conviction:

NOVEMBER 18th 2011

3. Offense(s) of which petitioner was convicted (list all counts with indictment numbers, if known)

COUNT#1, AGGRAVATED KIDNAPPING 10CR-6763, CHARGE FD CODE: 0012350COUNT#5 ARMED HABITUAL CRIMINAL 10CR-6763, CHARGE FD CODE: 0013855COUNT#6 ATTEMPT AGGRAVATED CRIMINAL SEXUAL ASSAULT 10CR6763 CHARGE FD CODE: 0012360

4. Sentence(s) imposed:

NATURAL LIFE

5. What was your plea? (Check one)

(A) Not guilty

☒

(B) Guilty

☐

(C) Nolo contendere

☐

If you pleaded guilty to one count or indictment and not guilty to another count or indictment, give details:

PART I – TRIAL AND DIRECT REVIEW

1. Kind of trial: (Check one): Jury ☒ Judge only ()
2. Did you testify at trial? YES () NO ☒
3. Did you appeal from the conviction or the sentence imposed? YES ☒ NO ()

(A) If you appealed, give the

- (1) Name of court: APPELLATE COURT OF ILLINOIS, FIRST DISTRICT
(2) Result: CONVICTION AFFIRMED
(3) Date of ruling: JUNE 5TH, 2014
(4) Issues raised: SEE 2 A + B

(B) If you did not appeal, explain briefly why not:

N/A

4. Did you appeal, or seek leave to appeal, to the highest state court? YES ☒ NO ()

() If yes, give the

- (1) Result: PLA DENIED
(2) Date of ruling: SEPTEMBER 24TH 2014
(3) Issues raised: SEE 2 B

(B) If no, why not:

N/A

5. Did you petition the United States Supreme Court for a writ of *certiorari*? Yes () No ☒

If yes, give (A) date of petition: N/A (B) date *certiorari* was denied: N/A

- I. Petitioner's Convictions Must Be Reversed Because the Complainant's Testimony Regarding the Specifics of the Offense and the Time Line of Events Is Improbable and Unworthy of Belief...
 - A. D.F. had a motive to lie about the events in order to avoid getting in trouble for staying out all night without his mother's permission...
 - B. D.F.'s story about the kidnaping and attempt criminal sexual assault was repeatedly impeached and is contrary to the laws of human nature and experience...
 - C. D.F.'s time line of events is fraught with inconsistencies and contradictions, and fails to account for the five hours between the time he left home and then appeared at the police station...
 - D. D.F.'s identification of Petitioner is unpersuasive and does not support a finding that there is no reasonable doubt in this case...
 - E. The numerous inconsistencies and improbabilities that arise from D.F.'s version of events so undermines his credibility that reasonable doubt exist in this case...
- II. Petitioner Was Denied a Fair Trial By: A) Officer Akins' Improper Lay opinion Testimony That the Complainant's "Demeanor Was Similar to That of a Rape Victim;" and B) Detective Barnes' Irrelevant and Prejudicial Testimony That an "Investigative Alert," Which "Acts as a Warrant," Was Issued for Petitioner...
 - A. Officer Akins' testimony that D.F. "demeanor was similar to that of a rape victim" is inadmissible lay opinion...
 - B. The trial court erred in admitting Detective Barnes' irrelevant and prejudicial testimony that an "investigative alert," which "acts as a warrant," was issued for petitioner...
- III. Petitioner Was Denied Effective Assistance of Counsel Where Defense Counsel Failed To: A) to Support His Theory of Defense and Establish for the Jury That the Complainant's Testimony Was Incredible When the Time Line of Events and the Locations Relevant to the Offense Are Considered; B) Sever the Armed Habitual Criminal Charge from the Remaining Charges So the Jury Would Not be Prejudiced by Learning That Petitioner was a Convicted Felon; and C) Move to Suppress the Photo Array as Unduly Suggestive...
 - A. Defense counsel failed to support his theory of defense and establish for the jury that D.F.'s testimony was incredible when the time line of events and the locations relevant to the offense are considered...
 - B. Defense counsel was ineffective for failing to move to sever the armed habitual criminal charge from aggravated kidnaping and attempt aggravated criminal sexual assault charges...
 - C. Trial counsel was ineffective for failing to file a motion to suppress the photo array as unduly suggestive...
- IV. Petitioner's Conviction for Armed Habitual Criminal Should Be Reversed, His Conviction for Attempt Aggravated Criminal Sexual Assault Should Be Reduced to Attempt Criminal Sexual Assault, and His Conviction for Aggravated Kidnaping Should Be Reduced to Kidnaping Because the State Failed to Establish That the Weapon

Used Was a Firearm..

- I. Review Is Required to Determine If it Is Ever Permissible to Allow a Police Officer, Who Has Not Been Qualified as an Expert, to Give Lay Opinion Testimony in an Attempt Aggravated Criminal Sexual Assault Case That the Complainant's Demeanor Was "Similar to that of a Rape Victim."
- II. Leave to Appeal Should Be Granted Because in Reviewing the Sufficiency of the Evidence, the Appellate Court Ignored Key Facts and Solely Deferred to Jury's Conclusions Without Considering the Evidence.
- III. Review Is Necessary to Provide Guidance on the Admissibility of "Course of Investigation" evidence.
- IV. Leave to Appeal Should Be Granted to Determine Whether Trial Counsel was Ineffective For Failing to Sever the Charges.

PART II – COLLATERAL PROCEEDINGS

1. With respect to this conviction or sentence, have you filed a post-conviction petition in state court?

YES (✓) NO ()

With respect to *each* post-conviction petition give the following information (use additional sheets if necessary):A. Name of court: CIRCUIT COURT OF COAL COUNTY ILLINOISB. Date of filing: MAY 29TH 2015C. Issues raised: SEE 3 A

D. Did you receive an evidentiary hearing on your petition? YES () NO (✓)

E. What was the court's ruling? PETITION DISMISSEDF. Date of court's ruling: AUGUST 7TH 2015

G. Did you appeal from the ruling on your petition? YES (✓) NO ()

- H. (a) If yes, (1) what was the result? DENIED(2) date of decision: JULY 18, 2018(b) If no, explain briefly why not: NA

- I. Did you appeal, or seek leave to appeal this decision to the highest state court?

YES (✓) NO ()

(a) If yes, (1) what was the result? DENIED(2) date of decision: NOVEMBER 28, 2018(b) If no, explain briefly why not: N/A

- I. Relying on *Strickland v. Washington*, 466 U.S. 668 (1984) Alleged 6th and 14th amendment violations of counsel on direct appeal failed to brief fair trial and due process claims arising from the trial courts refusal to strike jurors who expressed they'd believe police over other witnesses (App B; 6-14).
- II. Relying on legal principles in *Jackson v. Virginia*, 443 U.S. 307 (1979) and *In Re Winship*, 397 U.S. 358 (1970) Alleged 14th amendment violation arising from conviction on insufficient proof to prove petitioner had a firearm and conviction resulted from States repeatedly misstating facts and evidence. (App.B:14-26).
- III. Relying on *Dunn v. United States*, 307 f.3d 883 (1962) and *Shaw v. DeRobertis*, 755 f.2d 1274 (1985) alleged federal due process and fair trial claims from the improper shift of burden, repeated misstatement of facts and evidence and inflammatory and prejudicial closing argument. (App.B; 26-36).
- IV. Relying on *United States v. Miller*, 471 U.S. 130 (1985) *In Re Winship*, 397 U.S. 358 (1970) and *In Re Bains*, 121 U.S. 1 (1887) alleged due process and ineffective assistance of trial counsel arising from a failure to challenge an unlawful constructive amendment of the indictment and ineffective assistance of counsel on direct appeal for failure to brief the issue. (App.B-37-41).
- V. Relying on *Gray v. Greer*, 800 f.2d 644 (7th Cir.), *Alleyne v. United States*, 133 S.Ct. 2151 (2013) and *Apprendi v. New Jersey*, 530 U.S. 466 (2001) alleged federal 6th and 14th amendments violation arising from trial counsels failure to prepare for defense motion by including authority proscribing use of element of the offense to double enhance a penalty and failing to correct the State and Courts incorrect assertion that no such authority exists and failure of counsel on direct appeal to brief the issues. (App.B; 41-46).
- VI. Relying on *Strickland v. Washington*, 466 U.S. 668 (1984); *Peoples v. United States*, 403 f.3d 844 (2005) and *Hadley v. Groose*, 97 F.3d 1131 (1996) alleged trial counsel was ineffective for failing to impeach State witness Det. Barnes with material in counsels possession; failure to explore juror's collegiate relationship with the court; failed to move to preclude use of prior conviction under the Montgomery Rule (*Montgomery*, 47 Ill.2d 510) and failure of counsel on direct appeal to brief the issues. (App.B; 46-55).

2. With respect to this conviction or sentence, have you filed a petition in a **state court** using any other form of post-conviction procedure, such as *coram nobis* or habeas corpus? YES () NO (✓)

A. If yes, give the following information with respect to each proceeding (use separate sheets if necessary):

1. Nature of proceeding N/A
2. Date petition filed N/A
3. Ruling on the petition N/A
4. Date of ruling N/A
5. If you appealed, what was the ruling on appeal? N/A
6. Date of ruling on appeal N/A
7. If there was a further appeal, what was the ruling? N/A
8. Date of ruling on appeal N/A

3. With respect to this conviction or sentence, have you filed a previous petition for habeas corpus in **federal court**? YES () NO (✓)

A. If yes, give name of court, case title and case number: N/A

B. Did the court rule on your petition? If so, state

- (1) Ruling: N/A
- (2) Date: N/A

4. With respect to this conviction or sentence, are there legal proceedings pending in any court, other than this petition? YES () NO ()

If yes, explain:

(C) Ground three PETITIONER 14TH AMENDMENT WAS VIOLATED
Supporting facts:

WHEN THE TRIAL COURT ERRED IN ADMITTING DETECTIVE
BARNE'S IRRELEVANT AND PREJUDICIAL TESTIMONY THAT AN
"INVESTIGATIVE ALERT," THAT ACTS AS A WARRANT, BUT NEVER
GOT A WARRANT TO GO INTO THE APARTMENT WHERE THIS
CRIME WAS SUPPOSE TO HAPPEN, TO GET FINGER PRINTS OR DNA
OF D.F. TO PROVE THIS CRIME HAPPEN.

(D) Ground four PETITIONER WAS DENIED HIS 6TH AND 14TH
Supporting facts:

AMENDMENT OF EFFECTIVE ASSISTANCE OF COUNSEL FOR
FAILING TO SEVER THE CHARGES OF THE USE OF ESTABLISHED
RULES OF EVIDENCE AND PROCEDURE TO AVOID, WHEN
POSSIBLE, THE ADMISSION OF INCRIMINATING STATEMENTS,
HURTFUL OPINIONS AND PREJUDICIAL FACTS OF PRIOR
CONVICTIONS.

2. Have all grounds raised in this petition been presented to the highest court having jurisdiction?
YES () NO ()
3. If you answered "NO" to question (2), state briefly what grounds were not so presented and why not:

PART III - PETITIONER'S CLAIMS

1. State briefly every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. You may attach additional pages stating additional grounds and supporting facts. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds later.

BEFORE PROCEEDING IN THE FEDERAL COURT, YOU MUST ORDINARILY FIRST EXHAUST YOUR STATE COURT REMEDIES WITH RESPECT TO EACH GROUND FOR RELIEF ASSERTED.

(A) Ground one PETITIONER 14TH AMENDMENT WAS VIOLATED WHEN
Supporting facts (tell your story briefly without citing cases or law):

OFFICER AKINS WAS NOT QUALIFIED AS AN EXPERT, AND LAYED OPINION TESTIMONY IN AN ATTEMPT AGGRAVATED CRIMINAL SEXUAL ASSAULT CASE THAT COMPLAINANT'S DEemeanor WAS "SIMILAR TO THAT OF A RAPE VICTIM." THIS TESTIMONY BOOST UP THE COMPLAINANT CREDIBILITY, THAT LED TO PETITIONER CONVICTION, SENSE THE JURY BELIEVES OFFICER'S TESTIMONY OVER ANYBODY ELSE.

(B) Ground two PETITIONER 14TH AMENDMENT WAS VIOLATED FROM
Supporting facts:

THE TIME LINE OF EVENTS WITH INCONSISTENCIES, CONTRADICTIONS, IDENTIFICATION OF PETITIONER WHEN D.F. STATED THAT PETITIONER WAS 5'4 AND 150 TO 170 POUNDS WHERE PETITIONER WAS 6'4 AND 250 POUNDS, AND AFTER REVIEWING THE SUFFICIENCE OF THE EVIDENCE, WHERE D.F. FINGER PRINTS AND DNA WAS NOT FOUND IN PETITIONER CAR, AFTER CLAIMING THAT HE WAS IN PETITIONER CAR, ALL THIS SHOWS THAT PETITIONER WAS NOT PROVEN GUILTY BEYOND A REASONABLE DOUBT. (R. T141, 161-62, C. 14, R. T43, 89-90, 124, 119, 45

(E) GROUND FIVE: PETITIONER NATURAL LIFE SENTENCE SHOULD BE VACATED, WHERE THE SENTENCE IMPOSED INVOLVES A IMPROPER DOUBLE ENHANCEMENT THAT TAKES PLACE WHEN EITHER A SINGLE FACTOR IS USED BOTH AS AN ELEMENT OF AN OFFENSE AND AS A BASIS FOR IMPOSING A HARSHER SENTENCE THAN MIGHT OTHERWISE HAVE BEEN IMPOSED, WHICH IS A VIOLATION OF HIS 14TH AMENDMENT.

(F) GROUND SIX: PETITIONER 14TH AMENDMENT IS VIOLATED, WHERE THIS COURT RULE ALL CITIZENS, INCLUDING FELONS, ARE ELIGIBLE TO LEGALLY POSSES FIREARMS, THE ARMED HABITUAL CRIMINAL OFFENSE IS THEREFORE UNCONSTITUTIONAL, BECAUSE IT CRIMINALIZE BOTH THE LAWFUL AND UNLAWFUL POSSESSION OF FIREARMS, BECAUSE IT COULD CRIMINALIZE INNOCENT CONDUCT UNRELATED TO ITS PURPOSE.

(G) GROUND SEVEN: PETITIONER PRIOR CONVICTIONS THAT OCCURED PRIOR TO THE EFFECTIVE DATE OF THE ARMED HABITUAL CRIMINAL STATUTE VIOLATES DUE PROCESS AND ARTICLE I, WHETHER IT WOULD IMPAIR RIGHTS A PARTY POSSESSED WHEN HE ACTED, INCREASES A PARTY'S LIABILITY FOR PAST CONDUCT OR IMPOSE NEW DUTIES WITH RESPECT TO TRANSACTIONS ALREADY COMPLETED.

(H) GROUND EIGHT: PETITIONER ^{HAS} DUE PROCESS TO ACCESS TO THE COURT REQUIRES THAT LITIGANTS HAVE A REASONABLY ADEQUATE OPPORTUNITY TO PRESENT CLAIMS OF FUNDAMENTAL CONSTITUTIONAL RIGHTS TO THE COURTS.

(I) GROUND NINE: PETITIONER WAS DEPRIVED OF REASONABLE ASSISTANCE OF COUNSEL ON APPEAL FROM DENIAL OF HIS PC WHERE THERE WAS A REASONABLE PROBABILITY OF A DIFFERENT OUTCOME HAD COUNSEL PERFORMED THEIR DUTIES.

PART IV – REPRESENTATION

Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- (A) At preliminary hearing Mr. Martin Abrams
- (B) At arraignment and plea Mr. Veron Scheyler Public Defender
- (C) At trial Mr. Veron Scheyler Public Defender
- (D) At sentencing Mr. Veron Scheyler Public Defender
- (E) On appeal Ms. Carolyn R. Klauquist 1501ST. DIRECT
- (F) In any postconviction proceeding Mr. Bret C Zeeb
- (G) Other (state): _____

PART V – FUTURE SENTENCE

Do you have any future sentence to serve following the sentence imposed by this conviction?

YES () NO (X)

Name and location of the court which imposed the sentence: _____

Date and length of sentence to be served in the future _____

WHEREFORE, petitioner prays that the court grant petitioner all relief to which he may be entitled in this proceeding.

Signed on: _____
(Date)

Signature of attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct.

Terri J. Lee
(Signature of petitioner)

B50137
(I.D. Number)

MENARD CORRECTIONAL CENTER P.O. Box 1000
(Address)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

TERRIN LEE

Plaintiff,

v.

JACQUELINE LASHBROOK

Defendants.

1:18-cv-8502

Judge Charles P. Kocoras

Magistrate Judge Sheila M. Finnegan

PC10

Judge Presiding.

NOTICE OF FILING

TO:

Clerk of the United States District Court

219 South Dearborn Street

Chicago, Illinois 60604

FILED

DEC 27 2018 *PK*

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

PLEASE TAKE NOTICE that on or before the 18 day of
December, 2018, I shall file with the Clerk
of the U.S. District Court For The Northern District
of Illinois, the attached Plaintiff's Federal Habeas Corpus Relief
with transcripts and exhibits, along with the IN FORMA PAUPERIS, and I
request a stamp filed copy for my file.
a copy of which is hereby served upon you.

By: Terrin Lee

Register Number B-50137

Post Office Box 1000

Menard, Illinois 62259

CERTIFICATE OF SERVICE

I, Terrin Lee, being duly sworn aver
that I have served copies of the foregoing to the person named above
by placing such copies in the U.S. Mailbox at the Menard Correctional
Center on the 18 day of December, 2018; postage
prepaid. UNDER THE PENALTY OF PERJURY THE FOREGOING IS TRUE AND
CORRECT.

Terrin Lee
Affiant/

TERRIN LEE #B50137

P.O. Box 1000

MENARD, IL. 62259

Correspondence From IDOC Inmate

-LEGAL MAIL-



U.S. POSTAGE PITNEY BOWES



ZIP 62259 \$ 007.70⁰
02 1W
0001389078 DEC 20 2018



12/27/2018-58

CLERK OF DISTRICT COURT
FOR Northern District
9 So. Dearborn Street
CHICAGO, IL. 60604

ATTN: prisoner correspondence



1:18-cv-08502
Judge Charles P. Kocoras
Magistrate Judge Sheila M. Finnegan
PC10

DEC 27 AM 5:30
CLERK
U.S. DISTRICT COURT

LEGAL MAIL

1 OF 3

TERRIN LEE #B-50137

P.O. BOX 1000

MENARD, ILL, 62259

Correspondence From IDOC Inmate

-LEGAL MAIL-



U.S. POSTAGE PITNEY BOWES



ZIP 62259 \$ 007.70⁰
02 1W
0001389078 DEC 20 2018

1:18-cv-08502

Judge Charles P. Kocoras

Magistrate Judge Sheila M. Finnegan

PC10



12/27/2018-59

CLERK OF DISTRICT COURT
FOR Northern District

219 SO. DEARBORN STREET

CHICAGO, IL 60604

ATTN: Prisoner correspondence



UNITED STATES POSTAL SERVICE

Visit us at usps.com



Label 107R, January 2008

LEGAL MAIL

2 OF 3

TERRIN LEE #B-50137
P.O. BOX 1000
MENARD, IL. 62259

Correspondence From IDOC Inmate

-LEGAL MAIL-



U.S. POSTAGE >> PITNEY BOWES



ZIP 62259 \$ 007.70⁰
02 1W
0001389078 DEC 20 2018



12/27/2018-57

CLERK OF DISTRICT COURT
FOR NORTHERN DISTRICT
219 SO. DEARBORN STREET
CHICAGO, IL. 60604

ATTN: prisoner correspondence



1:18-cv-08502
Judge Charles P. Kocoras
Magistrate Judge Sheila M. Finnegan
PC10

LEGAL MAIL

30F 3